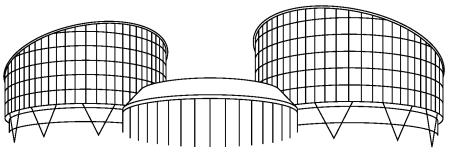

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF GRUJOVIĆ v. SERBIA

(Application no. 25381/12)

JUDGMENT

STRASBOURG

21 July 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Grujović v. Serbia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

JosepCasadevall, *President,*
LuisLópez Guerra,
DragoljubPopović,
KristinaPardalos,
JohannesSilvis,
ValeriuGriţco,
Iulia AntoanellaMotoc, *judges,*

and Marialena Tsirli,*DeputySection Registrar,*

Having deliberated in private on 30 June 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 25381/12) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, MrNenadGrujović ("the applicant"), on 18 April 2012.

2. The applicant was represented by MsZ.Dobričanin-Nikodinović, a lawyer practising in Belgrade. The Serbian Government ("the Government") were represented by their Agent, Ms V. Rodić.

3. The applicant alleged, in particular, that his pre-trial detention and the criminal proceedings against him had been excessively long. He also maintained that the Serbian authorities had hindered his right to individual petition to the Court.

4. The application was initially allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court).

5. On 5 June 2013 the complaints concerning the length of pre-trial detention and the length of the criminal proceedings were communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

6. On 1 February 2014 the Court changed the composition of its Sections (Rule 25 § 1). This case was thus assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1977. He is currently being detained in the Belgrade Central Prison.

It would appear that the applicant's criminal record predates the events complained of, and that he was arrested pursuant to an international arrest warrant in the Netherlands in 2003 for crimes other than those at issue in the present case.

A. The criminal proceedings

8. On 5 December 2006 the applicant was arrested and placed in custody in Austria, pursuant to an international arrest warrant.

9. On 20 December 2006 the Ministry of Justice of the Republic of Serbia (*Министарство правде Републике Србије*; "the Ministry of Justice") requested the applicant's extradition for the purpose of conducting several sets of criminal proceedings against him unrelated to the present case.

10. On 11 January 2007 the investigating judge of the Belgrade District Court ("the District Court") opened an investigation against the applicant, who was suspected of having participated in aggravated murder with unauthorised use of another person's vehicle and forgery. The offences had allegedly been committed on 24 March 2006.

11. On 29 January 2007 the Ministry of Justice extended its extradition request to include the above-mentioned criminal proceedings (see paragraph 10 above), which are the subject of the present case.

12. In the meantime, on 16 April 2007 the competent court in Austria found the applicant guilty of possession of an unlicensed firearm, which had been found on him at the time of his arrest, and sentenced him to seven months' imprisonment.

13. On 6 July 2007 the applicant was extradited to Serbia.

14. On 31 December 2007 the public prosecutor issued an indictment against the applicant and two other persons, V.S. and B.A, who were at large.

15. On 7 May 2008 the first hearing was held before the District Court. It was decided that V.S. and B.A. would be tried *in absentia*.

16. Subsequently, forty-one hearings were scheduled, of which nineteen were adjourned: four at the request of the applicant's defence counsel and fifteen for various procedural reasons, such as the absence of the co-accused's defence counsel, the absence of duly summoned witnesses and/or experts, erroneous delivery of summons, and delays concerning experts' opinions. Furthermore, the trial had to start anew six times because the

presiding judge and/or the composition of the trial chamber changed. From March 2010, following a reform of the domestic judicial system, the Belgrade High Court ("the High Court") took over the case.

17. On 1 April 2014 the High Court found the applicant guilty of complicity in aggravated murder, unauthorised use of another person's vehicle and forgery. It sentenced him to twenty years' imprisonment.

18. On 4 and 17 July 2014, respectively, the applicant and the public prosecutor appealed against the High Court judgment.

19. On 31 October 2014 the Belgrade Court of Appeal ("the Court of Appeal"), quashed the High Court judgment of 1 April 2014 and remitted the case for a re-trial.

B. The applicant's detention

20. On 11 January 2007 the investigating judge issued a detention order against the applicant in his absence, on the following grounds: (1) the risk of absconding; (2) the risk of obstructing the course of justice by exerting pressure on witnessesand his co-accused; (3) the risk of reoffending; and (4) the gravity of the criminal offences of which he was accused and the sentence that might be imposed on him. The one-monthperiod of detention was to be calculated from the date of the applicant's arrest. The relevant part of the decision reads as follows:

> "After committing the alleged criminal offences [and when preliminary criminal proceedings were initiated] the accused was at large. He was not available to the law-enforcement authorities until recently ... which justifies the fear that if released he would abscond.
>
> A number of witnesses are to be heard in the investigation, including the two co-accused ... this indicates that, if released, the accused would obstruct the course of justice byinfluencing the witnesses ...
>
> The accused had previously been convicted ... and committed several criminal acts within a short period of time ...the court considers that these facts represent special circumstances which justify the fear that, if released, he would reoffend.
>
> The accused has been charged with criminal offences punishable by imprisonment for more than ten years, and in view of the manner in which the offences were committed and the severity of their consequences, it is justified to order his detention also ... on the basis of the nature of the offences allegedand the severity of the penalty that could be imposed."

21. After his extradition to Serbia on 6 July 2007, the applicant was detained pursuant to the above order.

22. On 6 August and 4 October 2007, respectively, the District Court and the Supreme Court of Serbia ("the Supreme Court") further extended the applicant's detention, relying on the same grounds as before. They noted in particular that he had already been in hiding and had been arrested pursuant to an international warrant.

23. Thereafter, the applicant's detention was regularly examined and extended every two months by the District Court, the Supreme Court and, following a reform of the domestic judicial system, by the High Court and the Court of Appeal. In addition to those automatic reviews, the applicant repeatedly challenged his detention.

24. After issuing the indictment (see paragraph 14 above), the courts held that the second ground for detention, the risk of the applicant influencing the witnesses, had ceased to exist. Thus, from 4 January 2008 onwards his detention was extended on the following three grounds: (1) the risk of absconding; (2) the risk of reoffending; and (3) the gravity of the criminal offences of which he was accused and the sentence that might be imposed on him.

25. On 15 October 2013, although it rejected the applicant's appeal, the Court of Appeal accepted his argument concerning the third ground for detention and decided that it had ceased to exist. Hence, the applicant's detention was further extended only on the grounds that he might abscond and reoffend. The court held in particular:

> "...for this legal ground [for detention to be satisfied] the cumulative existence of two conditions is necessary: that the criminal offence in question is punishable by a sentence of more than ten years' imprisonment and [that there are] particularly aggravating circumstances. The conclusion of the first-instance court that the first condition exists is justified. However, this court considers that in the present case the second condition does not exist... [T]he reasons given in the contested order, which had previously justified the accused's detention on this ground, have now, more than seven years after the alleged offences were committed, ceased to exist ... [I]n the absence of other relevant elements, they do not in themselves justify detention on this ground, because these facts are contained in the factual description of the criminal acts in question and represent the [constituent] elements of those criminal acts.
>
> Therefore, the Court of Appeal holds that the reasons given in the contested order do not justify the extension of detention under Article 142 § 2 (5) of the Code of Criminal Procedure ..."

26. On 31 October 2014, in a decision by which it quashed the High Court's judgment of 1 April 2014 and remitted the case for a re-trial (see paragraph 19 above), the Court of Appeal ordered the applicant's detention on the grounds that he might abscond and reoffend.

C. Proceedings before the Constitutional Court

27. On 29 December 2011 the applicant lodged a constitutional appeal, complaining that his pre-trial detention was unlawful and its length had become excessive. He also complained about the length of the criminal proceedings and alleged that his right to be presumed innocent had been violated.

28. On 26 September 2012 the Constitutional Court rejected the applicant's appeal. As regards the lawfulness of his detention, the court held

that the domestic courts had referred to the specific facts of the case and the applicant's personal circumstances, and had not used general or abstract arguments to justify his continued detention. There was a reasonable suspicion, from the documents in the file, that the applicant had committed the criminal offences imputed to him. The court held in particular:

> "The conclusion [of the lower domestic courts] that the ground for detention provided for by Article 142 § 1(1) [the risk of absconding] of the Code of Criminal Procedure still exists, is justified in view of the fact that ... the accused was arrested in Austria and extradited to Serbia on 6 July 2007... the above circumstances justify the fear that if released he would abscond ...
>
> The conclusion [of the lower domestic courts] that the ground for detention provided for by Article 142 § 1(3) [the risk of reoffending] of the Code of Criminal Procedure still exists is justified in view of the fact that the accused had already been convicted for criminal offences involving physical force [robbery] ... and bearing in mind the nature and number of criminal offences imputed to him [in the present case] which were committed in a short period of time ...[the court considers that] these facts represent special circumstances which justify the fear that, if released, he would reoffend.
>
> The conclusion [of the lower domestic courts] that the ground for detention provided for by Article 142 § 1(5) [the serious nature of the offences with which he had been charged and the severity of the penalty which could be imposed on him if found guilty] of the Code of Criminal Procedure still exists is justified in view of the fact that he had been charged with ... criminal offences punishable by more than ten years' imprisonment, and in view of the manner in which the offences were committed ... in particular, according to the indictment, the accused had shown singular brutality and determination towards the victim."

As regards the length of detention, the Constitutional Court concluded that it had been reasonable in view of the complexity of the case: it concerned three co-accused, several criminal offences and complex legal and factual issues.

As regards the complaint about the length of the criminal proceedings, the Constitutional Court noted that the case at issue was a complex one; the case file contained more than one thousand pages and extensive photographic documentation. Furthermore, the court proceedings had had to start anew several times because of changes of presiding judge. Many procedural steps had been taken, numerous witnesses had been heard and a few expert testimonies had been taken.

Lastly, the Constitutional Court rejected the applicant's complaint concerning the presumption of innocence as unsubstantiated.

29. The applicant's subsequent constitutional appeals, containing the same complaints, were rejected on 26 and 27 September, and 10 October2012 and 20 November 2013 for the same reasons as before.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Republic of Serbia (*Ustav Republike Srbije*; published in the Official Gazette of the Republic of Serbia – OG RS – no. 98/06)

30. Article27 of the Constitution provides, *inter alia*:

> "[e]veryone has the right to personal freedom and security. Deprivation of liberty shall be allowed only on the grounds and in a procedure prescribed by law... Any person deprived of liberty shall have the right to initiate proceedings in which the court shall review the lawfulness of the arrest or detention and order the release if the arrest or detention was against the law."

31. Article 31 §§ 2 and 3 provide that "[t]he court shall reduce the duration of detention after the bringing of charges to the shortest possible period, in accordance with the law" and that "the [d]etainee shall be granted pre-trial release as soon as grounds for detention cease to exist".

32. Article 32 § 1 provides, *inter alia*, for the right to a hearing within a reasonable time.

B. Code of Criminal Procedure 2001 (*Zakonik o krivičnom postupku*, Official Gazette of the Federal Republic of Yugoslavia nos. 70/01 and 68/02; and OG RS nos. 58/04, 85/05, 115/05, 46/06, 49/07, 122/08, 20/09, 72/09 and 76/10)

33. Article 16 of the Code of Criminal Procedure 2001 provides that a suspect has the right to be brought promptly before a judge and to be tried without undue delay. The competent criminal court must conduct proceedings without undue delays and prevent any abuse of process by the parties.

34. Article 141 of the Code provides that detention must be ordered for the shortest time necessary and that all the authorities involved in the criminal proceedings must act with particular diligence if a suspect is in detention.

35. The grounds for detention are set out in Article 142 of the Code. Detention will be ordered if there is a reasonable suspicion that the accused has committed the criminal offence in question and if, *inter alia*, there is a risk that he or she might abscond (Article 142 § 2(1)), obstruct the course of justice (destroy evidence, influence witnesses or obstruct the course of justice in some other way) (Article 142 § 2(2)), reoffend (Article 142 § 2(3)), or if the criminal offence in question is punishable by a sentence of more than ten years' imprisonment and the manner in which the offence was committed, or other aggravating circumstances, justify the accused's detention (Article 142 § 2(5)).

C. Code of Criminal Procedure 2011 (*Zakonik o krivičnom postupku*, OG RS nos. 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14)

36. The Code of Criminal Procedure 2011 entered into force on 6 October 2011, but its application was postponed until 1 October 2013. With effect from the latter date, the Code of Criminal Procedure 2001 was repealed.

37. As regards the grounds for detention relevant to the present case, the new Code contains the same provisions as the old one (see Article 211 of the Code of Criminal Procedure 2011).

38. Article 216 § 6 provides that pre-trial detention can last until the detainee begins to serve his prison sentence, but that it cannot in any case be longer than a prison sentence imposed by a first-instance judgment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

39. The applicant complained about the length of his pre-trial detention. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

40. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

41. The applicant submitted that the length of his detention pending trial could not be regarded as justified for the purposes of Article 5 § 3 of the Convention. He argued that the reasons given for his detention had been arbitrary and unsupported by the facts. He further argued that the proceedings had not been conducted diligently.

(b) The Government

42. The Government maintained that the applicant's detention had been proportionate to the legitimate aim of ensuring his presence at trial and thus conducting the criminal proceedings. There had been no doubt that he might abscond, given that he had fled before and had twice been arrested pursuant to an international arrest warrant (in 2003 in the Netherlands and in 2006 in Austria). Furthermore, the applicant had twice attempted to cross the border illegally.

43. The applicant's detention was also duly re-examined at reasonable intervals and the courts' decisions to extend it were reasonable and in accordance with the law, given that there were still relevant and sufficient reasons to restrict his freedom for the protection of the public interest, which prevailed over the presumption of innocence in favour of the applicant.

44. Lastly, the Government argued that the domestic courts had been diligent in conducting the proceedings. The case was a complex one and the fact that the applicant was a member of an organised criminal group had further contributed to its complexity.

2. The Court's assessment

(a) The relevant principles

45. The Court reiterates that under its constant case-law the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among many other authorities *Kudła v. Poland* [GC], no. 30210/96, § 110*et seq*, ECHR 2000-XI, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references).

46. The presumption is in favour of release. The second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require him to be released provisionally once his continuing detention ceases to be reasonable (see *Margaretić v. Croatia*, no. 16115/13, § 88, 5 June 2014, with further references).

47. It falls in the first place to the national judicial authorities to ensure that in a given case the pre-trial detention of an accused person does not exceed a reasonable time. To this end, they must examine all the evidence for or against the existence of a genuine requirement of public interest

justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and the facts cited by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

48. The arguments for and against release must not be "general and abstract" (see *Smirnova v. Russia*,nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX). Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the specific facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

49. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see, amongst many others, *Toth v. Austria*, 12 December 1991, § 67, Series A no. 224; *B. v. Austria*, 28 March 1990, § 42, Series A no. 175; *Contrada v. Italy*, 24 August 1998, § 54, *Reports of Judgments and Decisions* 1998-V; and *I.A. v. France*, 23 September 1998, § 102, *Reports* 1998-VII).

(b) Application of the above principles to the present case

50. The period to be taken into consideration under Article 5 § 3 started with the applicant's transfer to Serbia on 6 July 2007 (see *Nedyalkov v. Bulgaria*, no. 44241/98, § 61, 3 November 2005, and *Chraidi v. Germany*, no. 65655/01, § 33, ECHR 2006-XII) and ended on 1 April 2014 with his conviction by the High Court (see paragraph 17 above). From that date until 31 October 2014, when the Court of Appeal quashed the first-instance judgment of the High Court (see paragraph 19 above), he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (see *Kudła,* cited above,§§ 104-105). From 31 October 2014 until the present day, the applicant is again in pre-trial detention for the purposes of Article 5 § 3 of the Convention (see *Solmaz v. Turkey*, no. 27561/02, § 34, 16 January 2007). The applicant's remand in custody has thus so far lasted seven years and almost five months.

51. The Court observes that in their orders to remand the applicant in custody the judicial authorities initially relied on the following grounds:

(1) the risk of absconding; (2) the risk of obstructing the course of justice by exerting pressure on witnesses and his co-accused; (3) the risk of reoffending; and (4) the gravity of the criminal offences of which he was accused and the sentence that might be imposed on him (see paragraph 20 above).

52. The subsequent decisions extending the detention evolved so as to reflect the developing situation and to verify whether those grounds remained valid at the later stages of the proceedings. Thus, on 4 January 2008 the domestic court held that the second ground for detention, the risk of the applicant influencing the witnesses, had ceased to exist (see paragraph 24 above). Furthermore, on 15 October 2013 the Court of Appeal held that the fourth ground for detention, the gravity of the criminal offences of which the applicant was accused and the sentence that might be imposed on him, had also ceased to exist (see paragraph 25 above).

53. The Court considers that the reasons advanced by the domestic authorities were certainly relevant. However, in the specific circumstances of the case, it does not consider it necessary to examine whether they were also sufficient or whether the domestic authorities should have considered in addition alternative measures to secure the applicant's presence at trial, as in any event the criminal proceedings in question were not conducted with the expedition required by Article 5 § 3 (see *Herczegfalvy v. Austria*, 24 September 1992, § 71, Series A no. 244). The domestic courts scheduled in total forty-two hearings, of which nineteen were adjourned, mainly for different procedural reasons that were not imputable to the applicant (see paragraph 16 above). Moreover, the trial had to start anew six times because the presiding judge and/or the composition of the trial chamber changed. The Government did not offer any explanation for those changes.

54. In view of the material in the case file, the Court is hesitant to accept the Government's argument that the complexity of the case justified its excessive length (see also the findings of the Constitutional Court in paragraph 28 above). Moreover, the Government submitted that the present case concerned organised crime(see paragraph 44above), which by definition presents more difficulties for the investigating authorities and, later, for the courts in determining the facts and the degree of responsibility of each member of the group. However, the Court notes that the applicant had not been charged with organising a criminal group or participating in organised crime which is further evident from the fact that the investigation in the present case had not been conducted by the Office of the Special Public Prosecutor for Organised Crime (compare *Luković v. Serbia*, no. 43808/07, §§ 46 and 55, 26 March 2013).Accordingly, as there were no exceptional circumstances in the present case that could justify such lengthy proceedings (compare and contrast to *Chraidi v. Germany*, cited above, §§ 43-45, and *Luković,* cited above, §§ 47 and 55), the Court considers that the applicant's detention exceeding seven years was extended beyond a

reasonable time (see *I.A. v. France*, cited above, §§ 98 and 112; *Khudoyorov v. Russia*, no. 6847/02, §§ 175 and 189, ECHR 2005-X (extracts); and *Korchuganova v. Russia*, no. 75039/01, §§ 71 *in limine* and 77, 8 June 2006).

55. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

56. The applicant also complained that the length of the criminal proceedings against him had exceeded the "reasonable time" requirement of Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination ... of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

57. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

58. The applicant argued that the proceedings, which had not involved complex legal or factual issues, had not been conducted diligently: they had had to start anew six times and nineteen hearings had been adjourned mainly for procedural reasons.

(b) The Government

59. The Government maintained that the competent courts had been diligent in conducting the proceedings. However, the complexity of the case as well as the applicant's own behaviour, as well as the fact that he belonged to an organised criminal group, had contributed to the length of the proceedings. He had been at large when the investigation had been opened against him and had not been extradited until 6 July 2007 (see paragraph 13 above).Some delays had also been caused by the absence of lawyers, witnesses and experts.

2. The Court's assessment

60. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Sürmeli v. Germany* [GC], no. 75529/01, § 128, ECHR 2006-VII). Article 6 is, in criminal matters, designed to ensure that a person charged does not remain too long in a state of uncertainty about his fate (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006, and *Veliyev v. Russia*, no. 24202/05, § 173, 24 June 2010). The Court considers that much was at stake for the applicant in the present case, bearing in mind that he risked imprisonment, that he was detained throughout the trial proceedings and that he is still detained pending re-trial proceedings.

61. The Court observes that the period under consideration in the present case began on 6 July 2007 when the applicant was extradited to Serbia (see *Nedyalkov*, cited above, § 86, and *Berhani v. Albania*, no. 847/05, § 65, 27 May 2010). The trial proceedings began on 7 May 2008 and ended on 1 April 2014. They were followed by the appeal proceedings which ended on 31 October 2014 when the Court of Appeal remitted a case for a re-trial. From the information available it would appear that the proceedings are still pending before the trial court. It follows that the criminal proceedings against the applicant have so far lasted for almost eight years for two levels of jurisdiction.

62. As the Court has already noted in the preceding paragraphs concerning Article 5 § 3, the present case did not involve complex legal or factual issues which would justify such an excessive length, nor did it concern organised crime.

63. As to the applicant's conduct, the Court reiterates that an applicant cannot be required to co-operate actively with the judicial authorities, nor can he be criticised for having made full use of the remedies available under the domestic law in the defence of his interests (see, among other authorities, *Rokhlina v. Russia*, no. 54071/00, § 88, 7 April 2005).

64. As to the conduct of the relevant authorities, the Court has already noted that the trial court scheduled in total forty-two hearings, of which nineteen were adjourned, mainly for different procedural reasons that were not imputable to the applicant (see paragraph 16 above). Moreover, the trial had to start anew six times because the presiding judge and/or the composition of the trial chamber changed. The Government did not offer any explanation for those changes.

65. The applicant remained in custody throughout the proceedings and is still detained. In this connection, the Court recalls that persons kept in detention pending trial are entitled to "special diligence" on the part of the authorities. Consequently, in cases where a person is detained pending the

determination of a criminal charge against him, the fact of his detention is itself a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see, for example, *Abdoella v. the Netherlands*, 25 November 1992, § 24, Series A no. 248-A; *Jabłoński v. Poland*, no. 33492/96, § 102, 21 December 2000; *Mõtsnik v. Estonia*, no. 50533/99, § 40, 29 April 2003; and *Bąk v. Poland*, no. 7870/04, § 81, 16 January 2007).

66. The domestic authorities were required to organise the trial efficiently and ensure that the Convention guarantees were fully respected in the proceedings. However, in the circumstances of the case, the Court is not satisfied that the conduct of the authorities was consistent with the fair balance which has to be struck between the various aspects of this fundamental requirement.

67. Having regard to all the circumstances of the case and the overall length of the proceedings, the Court considers that the "reasonable time" requirement of Article 6 § 1 of the Convention has not been respected. Consequently, there has been a violation of this provision.

III. ALLEGED INTERFERENCE WITH THE RIGHT TO INDIVIDUAL PETITION UNDER ARTICLE 34 OF THE CONVENTION

68. In his observations, the applicant complained, relying on Article 34 of the Convention, that he had received correspondence from the Court with delay and, further, that the envelope itself had already been opened by others.

69. The Government submitted that there had been no hindrance to the applicant's right of individual petition, as he had not been pressured, directly or indirectly, by the State in order to be dissuaded from pursuing his application before the Court. The correspondence between the applicant and the Court had never been obstructed by the authorities.

70. Article 34 of the Convention provides as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

71. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, § 105, *Reports* 1996-VI).

72. The voluminous correspondence which the applicant sent in the present case confirms that he was able to submit all his complaints to the Court by ordinary mail, and there is no indication that the correspondence between the Court and the applicant was unduly delayed or tampered with. In these circumstances, the Court finds that there is an insufficient factual basis for it to conclude that the authorities of the respondent State have interfered in any way with the applicant's exercise of his right of individual petition(see *Juhas Đurićv. Serbia*, no. 48155/06, § 75, 7 June 2011).

73. In view of the foregoing, the Court finds that the respondent Sate has not failed to comply with its obligations under Article 34 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

75. In respect of non-pecuniary damage the applicant claimed 10,000 euros (EUR) and EUR 1,000 per month spent in detention.

76. The Government considered the amounts claimed to be excessive.

77. The Court considers that the applicant has certainly suffered some non-pecuniary damage - such as distress and frustration resulting from the protracted length of his detention and trial. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicant also claimed approximately EUR 100,000 for the costs and expenses incurred before the domestic courts and for those incurred beforethe Court.

79. The Government considered the amount claimed to be excessive.

80. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and to the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under

all heads, plus any tax that may be chargeable on that amount to the applicant.

C. Default interest

81. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares*the application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*that the respondent State has not failed to comply with its obligations under Article 34 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three monthsfrom the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,the following amounts,to be converted into domestic currency at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable,in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Deputy Registrar	JosepCasadevall President